Supreme Court, U.S.
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No.

In the Supreme Court of the United States

JUDSON N. FULFORD

Petitioner

v.

AARON SWINDLE, CAROLYN SWINDLE,
AND LESLIE C. SWINDLE

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether Alabama's Putative Registry Law and its retroactivity feature as incorporated within the Alabama Adoption Code violate the Fourteenth Amendment to the United States Constitution ?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties to the proceeding here and before the Alabama Supreme Court, the Alabama Court of Civil Appeals, the Etowah County Probate Court and the Etowah District Juvenile Court:

Judson N. Fulford is the petitioner and appellant below; he is the father of the minor child who was adopted.

Aaron Swindle and Carolyn Swindle are the respondents and appellees below; they are the maternal grandparents of the mother of the minor child and her adoptive parents; additionally, Aaron Swindle and Carolyn Swindle filed the petition for adoption of the minor child who is their great grandchild.

Leslie C. Swindle is a respondent and appellee below; she is the mother of the minor child who was adopted.

C.L.S. is the minor child born unto Judson N. Fulford and Leslie C. Swindle, born out of wedlock; the petition filed by Aaron Swindle and Carolyn Swindle was to adopt this minor child.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states that there are no corporations to this cause of action.

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OPINIONS BELOW

Appeal was reversed and remanded in *J.N.F. vs. A.S.*, 866 So.2nd 582 (Ala.Civ.App., 2003). Consolidating appeals were reported in *L.C.S. v. J.N.F.*, 2005 WL 858292 (Ala.Civ.App., 2005).

JURISDICTION

On May 26, 2006, the Alabama Supreme Court denied Fulford's petition for a writ of certiorari from the opinion of the Alabama Court of Civil Appeals issued on April 15, 2005. The United States Supreme Court has jurisdiction under 28 U.S.C.§ 1257. The State of Alabama is not a party to this action, however, 28 U.S.C. § 2403(b) may apply and the Attorney General for the State of Alabama shall be served. The question of the constitutionality of the Alabama statutes drawn into question here were not certified by the State Court to the Alabama Attorney General.

STATUTES INVOLVED

This case involves Alabama statutes Ala. Code 1975, § 26-10A-9(a)(5) and § 26-10C-1.

STATEMENT OF THE CASE

The issue involved here addresses one of the more fundamental and cherished privileges in life, the rights of a father to his child and family. The Supreme Court has previously addressed compelling cases where parental rights, more particularly, those of the father are denied as a result of the lack of familial contact and relationship with a minor child.

This case differs in that at all times the father has maintained a significant and loving relationship with his child, bonded, provided for the care and maintenance of the child and attempted to form a family by marrying the mother.

At issue are equal protection and due process rights of the father that are violated under Alabama's adoption code and putative father's registry as well as retroactivity effect given to the law.

> After some uncertainty as to the proper framework for analyzing equal protection challenges to statutes containing gender-based classifications, see *ante*, at 1204, this Court settled upon the proposition that a statute containing a gender-based classification cannot withstand constitutional challenge unless the classification is substantially related to the achievement of an important governmental objective. *Kirchberg v. Feenstra*, 450 U.S. 455, 459, 101 S.Ct. 1195, 1198, 67 L.Ed.2d 428; *Wengler v. Druggists Mutual Ins. Co.*, 446 U.S. 142, 150, 100 S.Ct. 1540, 1545, 64 L.Ed.2d 107 (1980); *Califano v. Westcott*, 443 U.S. 76, 85, 99 S.Ct. 2655, 2661, 61 L.Ed.2d 382 (1979); *Caban v. Mohammed*, 441 U.S. 380, 388, 99 S.Ct. 1760, 1766, 60 L.Ed.2d 297 (1979); *Orr v. Orr*, 440 U.S. 268, 279, 99 S.Ct. 1102, 1111, 59 L.Ed.2d 306 (1979); *Califano v. Goldfarb*, 430 U.S. 199, 210-211, 97 S.Ct. 1021, 1028-1029, 51 L.Ed.2d 270 (1977); *Califano v. Webster*, 430 U.S. 313, 316-317, 97 S.Ct. 1192, 1194-1195, 51 L.Ed.2d 360 (1977); *Craig v. Boren, supra*, at 197, 97 S.Ct., at 457. This analysis applies whether the classification discriminates against males or against females. *Caban v. Mohammed, supra*, at 394, 99 S.Ct., at 1769; *Orr v. Orr, supra*, at 278-279,

99 S.Ct., at 1111; *Craig v. Boren, supra*, at 204, 97 S.Ct., at 460. The burden is on the government to prove both the importance of its asserted objective and the substantial relationship between the classification and that objective. See *Kirchberg v. Feenstra*, 450 U.S., at 461, 101 S.Ct., at 1199; *Wengler v. Druggists Mutual Ins. Co., supra*, at 151-152, 100 S.Ct., at 1546; *Caban v. Mohammed, supra*, at 393, 99 S.Ct., at 1768; *Craig v. Boren, supra*, at 204, 97 S.Ct., at 460. And the State cannot meet that burden without showing that a gender-neutral statute would be a less effective means of achieving that goal. *Wengler v. Druggists Mutual Ins. Co., supra*, at 151-152, 100 S.Ct., at 1546-1547; *Orr v. Orr, supra*, at 281, 283, 99 S.Ct., at 1112, 1113.

Michael M. vs. Superior Court of Sonoma County, 450 U.S. 464, 101 S.Ct. 1200 U.S.Cal.,1981.

Alabama's adoption statutes provide the mother has to give her written consent to an adoption. Conversely, a father's consent may be implied by his failure to register with the Alabama Putative Father's Registry. This statute holds true regardless of any involvement of the father in the child's life and disregards opposition which the father may exert to an adoption.

The discriminatory application of the adoption code and the failure to register with the putative father's registry threatens the valued relationship of numerous men with their children. Many of these men have been adjudicated in a court of law to be the biological and legal father of children. Men have been required to pay back child support as well as current child support and numerous times were jailed for contempt. Almost immediately many find themselves as

much as 24 months in arrears and are assessed a 12% interest rate until paid.

Although many men and fathers do not form relationships with their children in these situations, there are almost the same numbers that do develop significant and loving relationships and continue to maintain and care for their children.

Numerous men have lived in a relationship with the mother of their children and in all aspects have been a family, only the absence of marriage prevails to differentiate their rights from other similar situated fathers. This class of fathers has no rights to claim paternity if they did not register with the Alabama Putative Father's Registry; and, the mother may at any time consent to an adoption for that very reason.

"A classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 561, 64 L.Ed. 989 (1920).

The Due Process Clause is violated by such legislation that does not permit an unwed father to have the custody and control of his children absent a showing that he is unfit. A presumption that an unwed father is incompetent and unfit is discriminatory and further violated the Equal Protection Clause.

Our Supreme Court previously ruled in *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208 U.S.Ill. 1972 that a statute with such presumptions against an unwed father violated Equal and Due Process:

> The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come(s) to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.

Kovacs v. Cooper, 336 U.S. 77, 95, 69 S.Ct. 448, 458, 93 L.Ed. 513 (1949)"

Legislation enacted in April, 2002 adversely affects rights which previously vested in fathers, including the Petitioner in this case.

The Alabama legislature included a fifth provision to the adoption code which included the provision permitting termination of a father's paternal rights if he failed to register with the Alabama Putative Father's Registry either before or within 30 days after the birth of a child to whom he intends to claim paternity. Haunting is the fact the legislation applied retroactive to January 1997. Furthermore, the act stated once implied consent was granted, that consent may not be withdrawn.

A. FACTUAL BACKGROUND

The Putative Father's Registry Act, § 26-10C-1, was enacted by the Alabama legislature in 1999. In April 2002, another subsection was added to the law making the consequences of failure to register retroactive to January 1, 1997 and providing implied consent may not be withdrawn once implied.

The Alabama adoption statute providing the basis for implied consent to an adoption was also amended in April 2002 adding a fifth basis of implying consent, also premised upon the Putative Father's Registry Act. This statute is found under § 26-10A-9(a)(1-5).

Judson Fulford's child was born on June 10, 2001. The mother, Leslie Swindle, was a minor and consent to marriage was denied by her adoptive parents, Aaron and Carolyn Swindle (also her grandparents).

Both were students in high school. Fulford was in his senior year and in September signed a deferred enlistment in the United States Navy.

Leslie Swindle disclosed to the Swindles that she was pregnant while in counseling, where Fulford also participated. Fulford and Aaron Swindle had a contentious relationship prior to this disclosure which has continued.

Fulford went with Leslie Swindle to her prenatal care and by all accounts, held out to the public that he was the father of the expected child. The Swindles went on vacation and Leslie went to the Fulford house to stay with Judson Fulford and his parents.

While at the Fulford house she went into labor. Fulford took Leslie to the hospital and remained with her while the child was born and until her release. Upon release, Leslie Swindle, Fulford and the newborn child, C.L.S., all returned to live at the Fulford house.

There Fulford, Leslie Swindle and the baby all occupied the same room. Fulford shared in the care of the baby. About 30 days after the baby was born, Fulford had to report for military service as previously obligated.

Fulford became concerned that his name was not on the birth certificate. Fulford faked illnesses and other problems to obtain a release from military obligation. Fulford came home and bought a ring to marry Leslie Swindle.

By this time Leslie Swindle had moved back home with the Swindles. The Swindles refused to allow Fulford to see Leslie and the relationship ended.

Fulford's relationship with his child did not end. He continued to visit the child taking her home with him, feeding and changing the child, and playing with the child. Fulford paid medical expenses, provided for the day care expenses and provided clothing and food for the child.

The relationship further deteriorated and in December, 2002 Fulford was not allowed to take the child to his home afterwards. Fulford continued to visit the child at day care and to pay medical expenses and day care expenses.

B. PROCEEDINGS BELOW

Adoption proceedings in the Etowah Probate Court were begun in March, 2002 by Aaron and Carolyn Swindle. Leslie Swindle, the mother, gave written consent to the adoption and claimed to not know who or where the father was.

Over objection of Petitioner, the Probate Court granted the adoption and appeal was taken. Simultaneously, Petitioner filed a petition of paternity and custody in the District Court. While the adoption was on appeal, the District Court held in abeyance the paternity and custody petition.

Upon reversal and remand from the Alabama Court of Civil Appeals in July, 2003, both Probate Court and District Court took up the matters of adoption, paternity and custody. Petitioner filed a motion for an evidentiary hearing in the probate court which was opposed by the maternal grandparents on the basis of implied consent under the failure to register with the putative father's registry.

The district court established legal paternity through DNA testing in January 2004 and Petitioner was determined to be the legal and biological father of the child, custody was denied, child support ordered and visitation granted. The mother appealed the actions of the district court.

While appeal from the district court was in process, the probate court held a hearing on the adoption petition of the Swindle's and on July 30, 2004 entered an order granting adoption to the maternal grandparents finding implied consent by the Petitioner under § 26-10A-9(a)(5) Alabama Code, failure to register with the Putative Father's Registry.

Fulford appealed challenging the statute which conflicts with other Alabama statutes including the presumed father, as defined in Ala. Code § 26-17-5(a)(4), and the legal father status which was legitimatized by DNA tests and Order of the District Court.

Fulford challenged the retroactive application of § 26-10C-1 (Putative Father's Registry) which added as a fifth basis for implied consent to § 26-10A-9(a) in April of 2002 - after these proceedings were initiated and after presumed father status had vested in Fulford.

Swindle's adoption petition was filed in March, 2002, prior to the enactment of the fifth basis of implied consent.

A new adoption petition was never filed in the Probate Court after reversal and remand from the Court.

Fulford claimed the retroactive application of failure to register with the Putative Father's Registry as a basis for implied consent to adoption violates the Fourteenth Amendment to the United States Constitution as well as the Constitution of the United States.

Additionally, Fulford claimed the Alabama Father's Putative Registry is in conflict with previously decided cases by the United States Supreme Court. Fulford claimed the law is discriminatory towards fathers as a class and denies equal and due process. The mother is the only party that must give her consent, regardless of whether a parent/child relationship has been established with the father.

REASONS FOR GRANTING THE PETITION

Heightened scrutiny is applied when any law threatens or abridges the rights of a class of citizens as here. A class of citizens, unwed fathers ~~(men), is~~ subjected to presumptions without due process and discriminatory treatment based on their marital status. This class loses privileges of liberty and property that otherwise is guaranteed to all other citizens without a compelling interest on the part of the State.

Alabama's Putative Father's Registry, as applies retroactive to January 1, 1997 and as to the Alabama Adoption Code, ~~is discriminatory towards~~ unwed men as a class and denies rights of equal protection and due process without a compelling State purpose which can not be achieved by a less drastic alternative means. The administration of the law is a prohibited taking as envisioned by the authors of our Constitution and Bill of Rights.

Unwed fathers are automatically denied due process which otherwise is guaranteed to all mothers and married fathers. Assumptions as to the unfitness of unwed father's to parent are automatically made without provisions for a hearing and exceptions.

Women and mothers receive an automatic presumption of fitness to raise children and parent those children. Unwed mothers have the option of terminating an unwed father's rights of paternity without his consent and without a hearing as to his fitness to maintain a familial relationship.

An Alabama court can terminate an unwed father's rights of paternity regardless of how good a parent that father may be; regardless of any opposition the father may exercise to fight an adoption; and regardless of whether the father has maintained a significant and loving relationship with his child.

A child has no influence on any decision regarding whether the biological father remains the father. The law does not promote the best interest of a child where blood lines have always been held as a strong basis of a family relationship of parent-child.

The amendment to the Alabama adoption code sections in 2002 implying consent to an adoption improperly poses a burden on father's (men) as a class and more particularly, unwed father's as a result of the retroactive provision. Retroactive legislation as a whole is disfavored by both the United States Constitution and the Alabama State Constitution.

A male adjudicated the biological father in an Alabama Court or other state's court, failing to register with the Putative Father's Registry before the birth of the child or

within 30 days following the birth of the child, waives his claims to paternity and a presumption to consent of adoption will always exist. Whereas the mother has no such burden.

Thus, a male found to be the legal father, awarded visitation and ordered to pay child support (as in the case with Fulford) loses all rights of paternity to his child if the mother consents to an adoption. No consent is necessary on the part of the father, it's implied.

Additionally, an unwed father actively involved in the life of the child and mother prior to the birth, at birth and after birth, providing for the care and needs of both the mother and the child, and establishing a family relationship, discovers he has no rights to object to an adoption when the mother consents. Again, as in the case here with Fulford.

The Court has previously ruled in similar situations regarding the influence and involvement of the father in the child's life. *Caban v. Mohammed*, 441 U.S. 380, 388, 99 S.Ct. 1760, 1766, 60 L.Ed.2d 297 (1979).

CONCLUSION

The Alabama Putative Father's Registry and the Alabama Adoption Code as amended in April 2002 violate the Fourteenth Amendment of the United States Constitution.

These laws, as written, serve no compelling reason which can not be achieved a lesser restrictive alternative means and they serve to destroy established relationship between fathers and their children. Father and children suffer from the loss of the family when one has been established prior to an adoption proceeding.

The United States Supreme Court has previously held that putative father's registry laws and implied consent were constitutional when no familial relationship had been established. On the other hand, the Court has also determined when a familial relationship is established between child and father, that no such state law shall sever that relationship without equal protection and due process having been rendered.

A lesser restrictive law, providing for the unwed father who has been involved in the child's life and capable of parenting a child, can be enacted which will preserve the rights of those unwed father's who chose to be involved with their children. The family unit, however structured, may be preserved and adoptions of children will not be restricted by the enactment of legislation which is not so discriminatory and lacking of due process.

The petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Court of Civil Appeals of Alabama.
J.N.F.
v.
A.S., C.S., and L.C.S.
2011009.

May 23, 2003.

Maternal grandparents petitioned to adopt minor child. The Probate Court, Etowah County, Bobby M. Junkins, J., granted petition. Putative father appealed. The Court of Civil Appeals, Pittman, J., held that trial court's failure to address merits of putative father's contest to adoption required remand.

Reversed and remanded.

Murdock, J., concurred in the result and filed an opinion.

Yates, P.J., concurred in the result in part and dissented in part and filed an opinion in which Crawley, J., concurred.

Thompson, J., dissented and filed an opinion.

***582** Dani V. Bone, Gadsden, for appellant.

Leon Garmon, Gasden, for appellees.

PITTMAN, Judge.

This appeal arises from a judgment of the Etowah Probate Court permitting the adoption of C.L.S. ("the child"), born in June 2001 to L.C.S. ("the mother"), by C.S. and A.S., the mother's parents ("the petitioners").

In March 2002, the petitioners filed their petition in the Etowah Probate Court[1], seeking to adopt the child; the petitioners identified the mother as being the only known person "from whom consents and relinquishments to th[e] adoption are required by law" and they alleged that the child had resided in their home since her birth. The mother gave written consent to the adoption of the child by the petitioners, and the probate court entered an order on March 26, 2002, awarding pendente lite custody of the child to the petitioners and setting a "dispositional hearing" for June 19, 2002. The probate court further directed that notice of the proceedings be served in the manner prescribed by § 26-10A-17, Ala.Code 1975, which provided, at ***583** the time of the probate court's order,[2] that "notice of pendency of [an] adoption proceeding shall be served by the petitioner on," among other persons, "[t]he father and putative father of the adoptee if made known by the mother or otherwise known by the court." Section 26-10A-17(a)(10). Section 26-10A-17(c) provides for service "by publication, by posting, or by any other substituted service" upon a putative father "[i]f the identity or whereabouts of the parent is unknown, or if the one parent fails or refuses to disclose the identity or whereabouts of the other parent."

On April 10, 2002, the probate court directed that notice to "the unknown or undisclosed parent of [the child]" of the June 19, 2002, adoption proceedings be published at the expense of the petitioners. The notice of adoption was published for four consecutive weeks in a newspaper of general circulation in Etowah County; it was last published

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[1] We note that no case number has been assigned by the probate court.

[2] Section 26-10A-17 was amended in 2002; however, the quoted language was unchanged by the amendment.

on May 8, 2002. On June 4, 2002, within 30 days of the final publication date of the notice of adoption, an attorney filed in the probate court a notice of his appearance on behalf of a man claiming to be the child's father, J.N.F. ("the putative father"); the putative father also filed an "objection" to the adoption, averring that he was a "fit and proper person" to have custody of the child and that DNA testing should be ordered to ascertain the child's paternity.

The record does not reflect what transpired at the June 19, 2002, hearing on the adoption petition; however, the parties in the briefs to this court contend that the probate court gave them permission to file exhibits. On June 20, 2002, the putative father filed a number of documents in the probate court, including a calendar that, the putative father alleged, reflected the number of days the child had spent in the putative father's home, a pediatric-clinic record signed by the mother identifying the putative father as the child's father, and documents indicating expenditures by the putative father's family on behalf of the child for day care and medical care. On June 21, 2002, the petitioners filed copies of papers that, they alleged, concerned the circumstances of the putative father's separation from military service. Finally, on June 25, 2002, the putative father submitted additional financial documents that he claimed showed day-care expenditures made by him on behalf of the child.

The probate court's judgment from which the putative father appeals is dated June 19, 2002; however, the parties contend that that judgment was not "filed" (i.e., entered) until June 25, 2002. The probate court's judgment is in the same typeface as the petitioners' filings, and it appears to be based on a judgment form supplied by the petitioners. In its judgment, the probate court stated, in pertinent part:

This above-styled cause is now properly before

> the Court for disposition; and it now appears that an Interlocutory Order has been entered in this matter ...; that due and proper notice of these proceedings has been perfected on those entitled; *that all required consents to the adoption have been placed of record;* and that all other requisites of law have been met; and on motion the Court proceeds; and
>
> The Court being satisfied from clear and convincing- evidence adduced that the facts alleged in said petition are true; that the adoptee has been in the actual physical custody of the Petitioner(***584** s) for a period of sixty (60) days or more; *that there has been no contest or objections brought in this cause;* that the Petitioner(s) is/are suitable to be the parent(s) of said adoptee and he/she/they desires to establish a parent/child relationship with the adoptee; that the best interest of the adoptee will be served by granting the petition; and that a change [of name of the adoptee and a change] of guardianship to the Petitioner(s) is proper.
>
> "It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the Petition for leave to adopt ... be and the same is hereby granted...."
>
> (Emphasis added; bracketed language in the original.)

On appeal from the probate court's judgment, the putative father contends that the probate court's judgment is based upon an incorrect premise, i.e., that there were no contests or objections to the adoption. The record clearly indicates that the probate court's judgment on this point is in error--the

putative father, within 30 days of receiving notice of the adoption proceedings, appeared through counsel and filed an objection to the adoption. The probate court, in rendering a judgment on a form that appears to have been supplied by counsel for the petitioners, erroneously failed to address the merits of the putative father's contest as required by § 26-10A-24(a), which mandates that a hearing be set to determine, among other things, the best interests of the adoptee and the validity of any actual or implied consents to adoption "[w]henever a motion contesting the adoption is filed." Moreover, we note that, in overlooking the putative father's contest of the adoption, the probate court failed to comply with § 26-10A-22, Ala.Code 1975, which requires the appointment of a guardian ad litem "[i]n the event of a contested adoption."[3]

The probate court's failure to address the merits of the putative father's contest of the adoption sought by the petitioners necessitates that we reverse the probate court's judgment. We therefore do not address the putative father's second argument concerning whether the putative father has consented to the adoption of the child, either expressly or by his conduct, or whether his parental rights should be terminated. We remand the cause to the probate court for that court to address the putative father's contest.

In reversing the probate court's judgment and remanding this case, however, we note that the law in this area is in a state

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[3] We also note that the Alabama Adoption Code, § 26-10A-1 et seq., Ala.Code 1975, in addition to requiring the appointment of a guardian ad litem to represent the adoptee in a contested-adoption proceeding, also requires the appointment of a guardian ad litem to represent the interests of a minor parent when that parent's consent is required for an adoption. *See* § 26-10A-8(a), Ala.Code 1975. The mother of the child was a minor at the inception of this action.

of relative flux. As the putative father correctly notes, a number of recent opinions issued by the Alabama Supreme Court and this court have considered the procedural and substantive rights of putative fathers in adoption cases under the versions of the Alabama Adoption Code, § 26-10A-1 et seq., Ala.Code 1975, and the Putative Father Registry Act, § 26-10C-1 et seq., Ala.Code 1975, in effect at the time those cases were decided. *E.g., Ex parte F.P.*, 857 So.2d 125 (Ala.2003) (plurality opinion); *Ex parte S.C.W.*, 826 So.2d 844 (Ala.2001); *Ex parte C.V.*, 810 So.2d 700 (Ala.2001) (plurality opinion); *K.L.B. v. W.M.F.*, 864 So.2d 333 (Ala.Civ.App.2002) (plurality opinion). However, in April 2002, the Legislature enacted Act No. ***585** 2002-417, 2002 Ala. Acts, which made significant changes to the Alabama Adoption Code and the Putative Father Registry Act, especially as to whether a putative father, by his failure or refusal to register with the Department of Human Resources, impliedly consents to an adoption. Moreover, in Section 3 of Act No. 2002-417, the Legislature expressly gave those amendments retroactive effect to January 1, 1997. In addressing the putative father's contest, the probate judge will necessarily be called upon to consider the effect of those legal developments upon the rights of the litigants in this case, including whether application of Act No. 2002-417 to the father in this case would violate § 95 of the Alabama Constitution of 1901. *See Ex parte F.P., supra.* Because of the scant record in this case, we deem it prudent to leave those issues for a determination in the first instance by the probate court on remand.

REVERSED AND REMANDED.

MURDOCK, J., concurs in the result.

YATES, P.J., and CRAWLEY, J., concur in the result in part and dissent in part.

THOMPSON, J., dissents.

MURDOCK, Judge, concurring in the result.

I concur in the result reached by the main opinion. I write separately only to note the following: The main opinion references a potential issue relating to § 95 of the Alabama Constitution. Judge Thompson responds to this reference in his dissent, discussing our Supreme Court's holding in *Ex parte F.P.*, 857 So.2d 125 (Ala.2003). Among other things, our Supreme Court stated in *Ex parte F.P.* that "the father's rights had vested before the passage of Act No. 2002-417[, Ala. Act.2002,] and [, therefore,] that Act cannot be applied retroactively as to him" under Article IV, § 95, Ala. Const. of 1901. 857 So.2d at 138. The Supreme Court also stated in *Ex parte F.P.*: "[W]e do not address the arguments concerning the constitutionality of the substantive provisions of the Act in proceedings where § 95 is not at issue; we leave those questions for another day." 857 So.2d at 138.

There may well be potential issues concerning the retroactive nature of the 2002 amendments to the Putative Father Registry Act; however, those issues have not been raised and I therefore would not address them.

YATES, Presiding Judge, concurring in the result in part and dissenting in part.

I agree with the main opinion that the case should be remanded to the probate court because J.N.F. attempted to contest the adoption. However, I believe the probate court should address whether J.N.F. was the "presumed" father before addressing his challenge to the adoption as a "putative" father. Although J.N.F. does not specifically contend that he is the child's "presumed" father under § 26-

10A-7(a)(3), Ala.Code 1975, there is a question of fact as to whether J.N.F., "regardless of paternity," "received the adoptee into his home and openly held out the adoptee as his own child." See also § 26-17-5(a)(4) of the Alabama Uniform Parentage Act.[4] Consent of the adoptee's presumed father is necessary. There is evidence in the record indicating that J.N.F., the mother, and the child lived with the paternal grandmother for a short period. ***586** J.N.F. and the paternal grandmother paid medical bills and day-care expenses for the child. Also, on a medical-information sheet the mother provided to the child's doctor, the mother acknowledged that J.N.F. was the father. I would remand the case for the probate court to determine whether the evidence would be sufficient to support a finding that J.N.F. was the presumed father under § 26-10A-7(a)(3)(d). If there is sufficient evidence to support such a finding, then the probate court should address whether he impliedly consented to the adoption under § 26-10A-9. If the probate court does not find that J.N.F. is the presumed father, then the court should address the adoption contest in terms of J.N.F's status as a putative father.

CRAWLEY, J., concurs.

THOMPSON, Judge, dissenting.

On April 17, 2002, the Alabama Legislature enacted amendments to the Alabama Adoption Code, § 26-10A-1 et seq., Ala.Code 1975, and the Putative Father Registry Act, § 26-10C-1 and -2, Ala.Code 1975. *See* Act No. 2002-417, Ala. Acts 2002. One of the primary changes created by the

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[4] A man is presumed to be the natural father of the child if "[w]hile the child is under the age of majority, he receives the child into his home or otherwise openly holds out the child as his natural child."

enactment of Act No. 2002-417 was the amendment of the Alabama Adoption Code and the Putative Father Registry Act so that each enactment now cross-references the other. *See* § 26-10A-7(a)(5), Ala.Code 1975; § 26-10A-9(a)(5), Ala.Code 1975; and § 26-10C-1(i), Ala.Code 1975. Thus, because the Legislature has clearly dictated that those provisions of the Alabama Adoption Code and the Putative Father Registry Act deal with the same subject matter, those provisions must be construed *in pari materia. Tuders v. Kell,* 739 So.2d 1069 (Ala.1999).[5]

In this case, the child was born on June 10, 2001; therefore, the provisions of the Alabama Adoption Code, as amended by Act No. 2002-417, apply to govern this action. *See* Act No. 2002-417, § 3, Ala. Acts 2002 (providing that the act

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[5] In *Ex parte S.C.W.*, 826 So.2d 844 (Ala.2001), our supreme court, relying on a dissent authored by Judge Crawley, reversed this court's affirmance of a judgment of adoption. This court had based its holding on the conclusion that the putative father's failure to comply with the Putative Father Registry Act rendered his consent to the adoption unnecessary. *S.C.W. v. C.B.*, 826 So.2d 825 (Ala.Civ.App.2001), *rev'd,* 826 So.2d 844 (Ala.2001). The Supreme Court of Alabama found that the Alabama Adoption Code and the Putative Father Registry Act, as they existed at the time of that court's decision, were separate enactments that did not cross-reference each other, and, therefore, that the two enactments were in conflict. *Ex parte S.C.W.*, 826 So.2d at 850. The supreme court resolved the conflict by concluding that the provisions of the more inclusive Alabama Adoption Code took precedence over the Putative Father Registry Act; therefore, the court held that the putative father's failure to comply with the Putative Father Registry Act, because he had taken other action to object to the adoption, did not prevent him from contesting the adoption. *Ex parte S.C.W.*, supra.

On April 17, 2002, after the Supreme Court released its decision in *Ex parte S.C.W.*, supra, the Legislature adopted Act No. 2002-417, Ala. Acts 2002. That act amended the Alabama Adoption Code and the Putative Father Registry Act so that each enactment now cross-references the other; pursuant to the new amendments, the two enactments are to be construed together. Thus, *Ex parte S.C.W.* has been superseded by statute.

has retroactive effect to January 1, 1997). After the petitioners filed their petition to adopt the child, the trial court ordered that notice by publication be provided, pursuant to § 26-10A-17(a)(10), Ala.Code 1975, to any putative father of the child. Upon receiving notice by publication of the adoption proceedings, J.N.F. filed a document on June 4, 2002, entitled "objection to [the] adoption." In that filing, J.N.F. objected to the adoption, contended that he was the ***587** child's natural father and that he was the fit and proper person to have custody of the child, and requested a DNA test to establish his paternity of the child.

J.N.F. does not contend that he is the child's presumed father under § 26-10A-7(a)(3), Ala.Code 1975, and the record does not support an inference that he is the child's presumed father. There is no evidence that the mother and J.N.F. ever married or attempted to marry, or that J.N.F. received the child into his home and held the child out as his own. *See* § 26-10A-7(a)(3), Ala.Code 1975. Also, the paternity of the child has never been established. Therefore, I conclude that J.N.F. is a putative father of the child. *See In re Adoption of J.C.P.*, [Ms. 2010594, Aug. 16, 2002] --- So.2d ---- (Ala.Civ.App.2002) (concluding, under facts similar to those in this case, that the appellant was not the presumed father but was a putative father of the child at issue).

Act No. 2002-417, among other things, amended § 26-10A-7, Ala.Code 1975, which sets forth the persons whose relinquishment or consent to an adoption is required. Section 26-10A-7, as amended, now provides in pertinent part that consent to an adoption shall be required from

> "[t]he *putative father* if made known by the mother or is otherwise made known to the court *provided he complies with Section 26-10C-1 [of the Putative Father Registry*

Act] and he responds within 30 days to the notice he receives under Section 26-10A-17(a)(10)."
§ 26-10A-7(a)(5), Ala.Code 1975 (emphasis added).

Thus, pursuant to the amendments to the Alabama Adoption Code effected by Act No. 2002-417, a putative father's consent for an adoption is required only where the putative father responds within 30 days to notice of the adoption *and* "complies with Section 26-10C-1." § 26-10A-7(a)(5), Ala.Code 1975. Section 26-10C-1, Ala.Code 1975, sets forth the method by which a putative father must register his intent to claim paternity of a child with the Department of Human Resources. The record in the instant case does not indicate that J.N.F. complied with § 26-10C-1 by registering under the putative-father registry; J.N.F. made no assertion before the trial court or in his brief to this court that he did in fact comply with § 26-10C-1. Therefore, under the clear terms of § 26-10A-7, as amended, J.N.F.'s consent to the adoption was not required.

Further, I conclude that, given the changes in the Alabama Adoption Code and the Putative Father Registry Act created by the enactment of Act. No.2002-417, J.N.F. was not a person entitled to file a contest to the adoption proceedings. The Putative Father Registry Act, as amended by Act No. 2002-417, now provides in pertinent part:

"(i) Any person who claims to be the natural father of a child and fails to file his notice of intent to claim paternity pursuant to subsection (a) prior to or within 30 days of the birth of a child born out of wedlock, shall be deemed to have given an irrevocable implied consent in any adoption proceeding.

"*This subsection shall be the exclusive procedure available for any person who claims to be the natural father of a child born out of wedlock on or after January 1, 1997, to entitle that person to notice of and the opportunity to*

contest any adoption proceeding filed and pending on or after January 1, 1997."

§ 26-10C-1(i), Ala.Code 1975 (emphasis added). Thus, as I interpret the newly amended Putative Father Registry Act, J.N.F.'s failure to comply with that section precludes him from filing a valid contest to the adoption. Section 26-10C-1(i) now ***588** provides the exclusive method by which a putative father is "entitle[d] ... to notice of *and the opportunity to contest* " any pending adoption proceeding. (Emphasis added.) Therefore, because J.N.F. did not comply with § 26-10C-1, I believe that he is precluded from contesting the adoption of the child.

In *Ex parte F.P.*, 857 So.2d 125 (Ala.2003), the supreme court recognized the implications of Act No. 2002-417 and its retroactive effect on the constitutional rights of a putative father. In *Ex parte F.P.*, the putative father filed a "petition to determine father and child relationship" on July 1, 1999, in which he alleged that he had registered with the putative-father registry; the father registered, pursuant to the Putative Father Registry Act, more than two years prior to the enactment of Act No. 2002-417. 857 So.2d at 137. The supreme court held that the putative father's constitutional rights had vested before the passage of Act No. 2002-417, and, therefore, the father had a defense to the adoption action filed by the adoptive parents. *Ex parte F.P.*, 857 So.2d at 138.

Unlike the putative father in *Ex parte F.P.*, the record in the instant case does not indicate that J.N.F. registered as a putative father pursuant to the Putative Father Registry Act. Moreover, J.N.F. first filed his notice of appearance on June 4, 2002, 48 days after Act No. 2002-417 was enacted by the Legislature. It is clear that, in applying the supreme court's holding in *Ex parte F.P.* to the facts before us in the instant case, J.N.F.'s rights did not vest and the retroactive

application of Act No. 2002-417 was proper.

In its judgment, the trial court determined that all required consents to the adoption had been provided, and that no contest to the adoption proceeding had been filed. Although J.N.F. filed a document in which he sought to object to the adoption of the child, because of his failure to comply with § 26-10C-1, Ala.Code 1975, as amended, J.N.F. was not a person *entitled* to contest the adoption. *See* § 26-10C-1(i), Ala.Code 1975. Therefore, the trial court was correct in determining that no contest to the adoption had been filed, because *no person entitled to file a contest* to the adoption proceedings did so. I believe that in reaching the findings contained in its judgment, the trial court properly interpreted the Alabama Adoption Code and the Putative Father Registry Act, as amended by Act No. 2002-417. I would affirm the trial court's judgment, which approves the petitioner's petition to adopt the child. Therefore, I must respectfully dissent.

866 So.2d 582

APPENDIX B

Court of Civil Appeals of Alabama.
L.C.S.
v.
J.N.F.
J.N.F.
v.
A.S., C.S., and L.C.S.
2030567 and 2031028.

April 15, 2005.

Background: Maternal grandparents petitioned to adopt out of wedlock child. The Probate Court, Etowah County, Bobby M. Junkins, J., granted the adoption petition. Putative father appealed. The Court of Civil Appeals, 866 So.2d 582, reversed and remanded. Putative father filed a complaint that sought a determination that he was father of child and an award of custody of child. The Juvenile Court, Etowah County, No. CS-02-199, William D. Russell, Jr., J., declared putative father to be the biological father of child and awarded father visitation with child. Mother appealed. On remand, the Probate Court granted grandparents' adoption petition. Father appealed.

Holdings: After consolidating the appeals, the Court of Civil Appeals, Pittman, J., held that:

(1) the probate court could determine whether to grant grandparents' petition to adopt child during the pendency of an appeal from the juvenile court's judgment of paternity involving child;

(2) evidence supported finding that father impliedly consented to grandparent's adoption of child; and

(3) mother's appeal from the juvenile's court's judgment of paternity was rendered moot.

Affirmed in part; appeal dismissed in part.

Thompson, J., concurred in the result.

Murdock, J., concurring in the result, with a writing in which Crawley, P.J., joined.

John D. McCord of McCord & Martin, Gadsden, for appellant L.C.S.

Dani V. Bone, Gadsden, for appellee/cross-appellant J.N.F.

Leon Garmon, Gadsden, for appellees A.S., C.S., and L.C.S.

PITTMAN, Judge.

***1** These two appeals involve a child, C.L.S. (hereinafter "the child"), who is currently at the center of litigation involving L.C.S., the child's mother (hereinafter "the mother"); A.S. and C.S., the child's maternal grandparents, who have petitioned to adopt the child (hereinafter "the maternal grandparents"); and J.N.F., a man who has claimed to be the child's father. The parties have been before this court on one previous occasion. In *J.N.F. v. A.S.*, 866 So.2d 582 (Ala.Civ.App.2003) ("*J.N.F. I* "), this court considered the propriety of a judgment of the Etowah Probate Court ("the probate court") allowing the maternal grandparents to adopt the child despite J.N.F.'s unadjudicated objection to the proposed adoption. The main opinion in *J.N.F. I* sets forth much of the pertinent initial procedural history:

> "In March 2002, the [maternal grandparents] filed their petition in the Etowah Probate Court, seeking to adopt the child; the petitioners identified the mother as being the only known person 'from whom consents and relinquishments to th[e] adoption are required by law' and they alleged that the child had resided in their home since

her birth. The mother gave written consent to the adoption of the child by the petitioners, and the probate court entered an order on March 26, 2002, awarding pendente lite custody of the child to the petitioners and setting a 'dispositional hearing' for June 19, 2002. The probate court further directed that notice of the proceedings be served in the manner prescribed by § 26-10A-17, Ala.Code 1975, which provided, at the time of the probate court's order, that 'notice of pendency of [an] adoption proceeding shall be served by the petitioner on,' among other persons, '[t]he father and putative father of the adoptee if made known by the mother or otherwise known by the court.' Section 26-10A-17(a)(10). Section 26-10A-17(c) provides for service 'by publication, by posting, or by any other substituted service' upon a putative father '[i]f the identity or whereabouts of the parent is unknown, or if the one parent fails or refuses to disclose the identity or whereabouts of the other parent.'

"On April 10, 2002, the probate court directed that notice to 'the unknown or undisclosed parent of [the child]' of the June 19, 2002, adoption proceedings be published at the expense of the petitioners. The notice of adoption was published for four consecutive weeks in a newspaper of general circulation in Etowah County; it was last published on May 8, 2002. On June 4, 2002, within 30 days of the final publication date of the notice of adoption, an attorney filed in the probate court a notice of his appearance on behalf of a man claiming to be the child's father, J.N.F....; [J.N.F.] also filed an 'objection' to the adoption, averring that he was a 'fit and proper person' to have custody of the child and that DNA testing should be ordered to ascertain the child's paternity.

"The record does not reflect what transpired at the June 19, 2002, hearing on the adoption petition; however, the parties in the briefs to this court contend that the probate court gave them permission to file exhibits. On June 20,

2002, [J.N.F.] filed a number of documents in the probate court, including a calendar that, [J.N.F.] alleged, reflected the number of days the child had spent in [J.N.F.]'s home, a pediatric-clinic record signed by the mother identifying [J.N.F.] as the child's father, and documents indicating expenditures by [J.N.F.]'s family on behalf of the child for day care and medical care. On June 21, 2002, the petitioners filed copies of papers that, they alleged, concerned the circumstances of [J.N.F.]'s separation from military service. Finally, on June 25, 2002, [J.N.F.] submitted additional financial documents that he claimed showed day-care expenditures made by him on behalf of the child.

***2** "... In its judgment, the probate court stated, in pertinent part:

" 'This above-styled cause is now properly before the Court for disposition; and it now appears that an Interlocutory Order has been entered in this matter ...; that due and proper notice of these proceedings has been perfected on those entitled; that all required consents to the adoption have been placed of record; and that all other requisites of law have been met; and on motion the Court proceeds; and

" 'The Court being satisfied from clear and convincing evidence adduced that the facts alleged in said petition are true; that the adoptee has been in the actual physical custody of the Petitioner(s) for a period of sixty (60) days or more; that there has been no contest or objections brought in this cause; that the Petitioner(s) is/are suitable to be the parent(s) of said adoptee and he/she/they desires to establish a parent/child relationship with the adoptee; that the best interest of the adoptee will be served by granting the petition; and that a change [of name of the adoptee and a change] of guardianship to the Petitioner(s) is proper.

" 'It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the Petition for leave to adopt

... be and the same is hereby granted....' "
866 So.2d at 582-84 (emphasis and footnotes omitted).

On appeal from that judgment, this court reversed. Although no single opinion garnered enough votes to amount to a majority opinion of this court, a reading of the three separate opinions offered by the judges voting to reverse the judgment indicates that the probate court's judgment was reversed because J.N.F. had filed a timely contest of the proposed adoption and, therefore, the contest should have been addressed by the probate court on its merits. *See J.N.F. I*, 866 So.2d at 584 (main opinion); 866 So.2d at 585 (Murdock, J., concurring in the result); 866 So.2d at 585 (Yates, P.J., concurring in the result in part and dissenting in part, joined by Crawley, J.).

On July 2, 2002, the day before filing a notice of appeal from the probate court's adoption judgment, J.N.F. filed a complaint in the Etowah Juvenile Court ("the juvenile court") seeking a determination that he was the father of the child and an award of custody as to the child.[1] Because *J.N.F. I* was pending before this court, the juvenile court stayed all proceedings until that appeal was decided.

Once *J.N.F. I* was decided, proceedings resumed in both courts. J.N.F. moved that the adoption proceedings be transferred to the juvenile court pursuant to Ala.Code 1975, § 26-10A-24(e); however, the probate court entered an order

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[1] The caption of that action (*In re: C.S.*) did not bear an adversarial style, and because the maternal grandparents were served with process in the action (apparently because of the mother's minority), they initially attempted to appear and to file motions in the case; however, the juvenile court later ruled that the maternal grandparents were *not* parties to the paternity action and ordered all papers filed by the maternal grandparents struck from the case file.

denying that motion, and this court denied, as untimely filed, a petition for a writ of mandamus challenging that order. *Ex parte J.N.F.* (No. 2020959, July 22, 2003), 891 So.2d 451 (Ala.Civ.App.2003) (table). Guardians ad litem were appointed by both courts to represent the interests of both the mother (who was a minor until July 2004) and the child. In July 2003, J.N.F. moved the probate court for a hearing in the adoption case, whereupon the maternal grandparents filed an objection in the probate court to further evidentiary hearings, arguing that J.N.F. had failed to register until July 1, 2002, with the Alabama Putative Father Registry, as established in Title 26, Chapter 10C, Ala.Code 1975, and that that omission barred his contest of the proposed adoption of the child. Without expressly acting on the maternal grandparents' motion, the probate court set a final hearing on the proposed adoption for October 7, 2003; however, that hearing was continued by the probate court because it had been scheduled on the same day that the juvenile court had directed deoxyribonucleic-acid (DNA) testing of the mother and the child. That scheduled DNA testing did not actually occur, however, until January 2004, at which time the probability of J.N.F.'s paternity of the child was determined to be 99.97%. By that time, the mother, acting through her guardian ad litem, had filed her own motion in the probate court for transfer of the adoption action to the juvenile court; however, that motion was not initially acted upon by the probate court.

*3 In February 2004, the juvenile court held an ore tenus proceeding on J.N.F.'s paternity and custody action; at that time, an attorney purporting to represent the mother filed a motion to dismiss that action, contending that the juvenile court had no jurisdiction to act. The juvenile court entered a judgment on March 5, 2004, denying the motion to dismiss and declaring J.N.F. to be the father of the child; although the juvenile court denied J.N.F.'s custody request, J.N.F. was

awarded visitation with the child and was directed to pay child support as to the child. The mother filed a postjudgment motion to alter, amend, or vacate that judgment; however, that motion was denied. The mother filed a timely notice of appeal from the juvenile court's judgment.

In July 2004, after the appeal had been taken from the juvenile court's judgment, J.N.F. filed in the probate court a motion to dismiss the adoption proceedings, alleging, in pertinent part, that the original adoption application had been defective and/or fraudulent in a number of respects; he also filed a response in support of the mother's earlier motion to transfer the adoption proceedings to the juvenile court. However, the mother, upon attaining the age of majority, appeared through counsel and withdrew the motion to transfer that her guardian ad litem had filed. The probate court then held an ore tenus proceeding on the maternal grandparents' adoption petition; after that proceeding, the mother filed a written consent to the proposed adoption. On July 30, 2004, the probate court entered a judgment granting the maternal grandparents' adoption petition; in that judgment, the probate court concluded, among other things, that J.N.F.'s consent to the adoption, which is required under Ala.Code 1975, § 26-10A-7, "may be implied by [his] actions and/or inactions ... pursuant to Section 26-10A-9." J.N.F. timely appealed from that judgment, and this court granted his motions to stay that judgment pending further orders of this court and to incorporate the appellate record from *J.N.F. I* into the record in the appeal from the probate court's judgment of adoption.

Ala.Code 1975, § 12-15-120(a), provides that an appeal to a *circuit court* from a judgment of a juvenile court may be taken within 14 days of the entry of the juvenile court's judgment and that appeals "under this chapter" are to "take

precedence over all other business of the court to which the appeal is taken." Although this court has held that that statute was superseded by the promulgation of Rule 28, Ala. R. Juv. P. (*Wright v. Montgomery County Dep't of Pensions & Sec.*, 423 So.2d 256, 257 (Ala.Civ.App.1982)), and although that statute does not expressly address direct appeals to this court (*compare* Ala.Code 1975, § 26-10A-26(b), pertaining to adoption appeals), this court has, nonetheless, sought to dispose of appeals from juvenile-court judgments with dispatch, given the importance of family-law questions generally presented by the parties to such appeals. *See* Rule 28, Ala. R. Juv. P., Comment to Amendment Effective November 15, 1985. However, we have departed from our usual practice and have deferred our consideration of the appeal from the juvenile court's judgment of paternity until the submission of the appeal from the probate court's judgment allowing the proposed adoption. Indeed, as will be discussed below, our resolution of the appeal from the probate court's judgment of adoption directly affects our disposition of the appeal from the juvenile court's paternity judgment, and we have therefore elected to treat both appeals in the same opinion.

***4** [1] J.N.F. argues that the probate court did not have the power to determine whether the adoption should be allowed during the pendency of the appeal from the juvenile court's judgment of paternity. We disagree; we perceive no legal impediment to the probate court's exercise of its statutory jurisdiction to determine whether a man may be deemed to have consented to an adoption petition simply because a dispute exists concerning the validity of another court's judgment declaring that that man is, in fact, the father of the proposed adoptee. The probate court's power to grant an adoption under the AAC is expressly conditioned upon the existence of the consent of the appropriate parties. The probate court's jurisdiction over the adoption petition was

thus *correlative of,* not *in conflict with,* the juvenile court's jurisdiction to declare J.N.F. to be the child's biological father. *Cf. Ex parte C.L.C.,* 897 So.2d 234, 237 (Ala.2004) (holding that a probate court retained "exclusive jurisdiction over the issue of whether or not to grant or deny [a] petition to adopt" a child notwithstanding the juvenile court's jurisdiction to terminate parental rights of child's father).

[2] We next address whether, as J.N.F. argues, the probate court could not grant the maternal grandparents' petition because, he says, the petition was "a fraud upon the Probate Court" in that the child's father's identity and location were falsely alleged by the maternal grandparents to be unknown. J.N.F.'s argument overlooks the decision of this court in *J.N.F. I,* which occurred after the filing of the original petition for adoption in this cause; we reversed the probate court's original judgment and directed that court, on remand, to consider J.N.F.'s contest of the adoption in deciding whether to grant the maternal grandparents' adoption petition. In effect, *J.N.F. I* held that the probate court could, and should, consider whether the requested adoption should take place despite any misstatements appearing in the maternal grandparents' petition. The failure of the maternal grandparents to file an amended adoption petition after this court's remand in *J.N.F. I* or after the probate court's ore tenus proceeding does not affect the power of the probate court to award the maternal grandparents the relief to which the probate court deemed them to be entitled under the evidence. *See* Rules 15(b) and 54(c), Ala. R. Civ. P.[2]]

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[2] If neither the AAC nor statutes specifically applicable to probate courts speak to a particular procedural issue, the procedures applicable in circuit courts apply to adoption proceedings in the probate courts. *See* Ala.Code 1975, § 12-13-12; *In re Morrison,* 388 So.2d 1014, 1015 (Ala.Civ.App.1980); and *Ex parte Hicks,* 451 So.2d 324, 326 (Ala.Civ.App.1984).

[3] Finally, we address whether the probate court's judgment granting the maternal grandparents' petition on the basis of J.N.F.'s having given implied consent to the adoption is unsupported by the evidence, as J.N.F. contends. As we have stated, the probate court determined that J.N.F.'s consent to the adoption could be implied pursuant to Ala.Code 1975, § 26-10A-9, which states the conditions upon which a consent to an adoption may be implied. In support of his argument, J.N.F. quotes the version of § 26-10A-9(a) that was in effect from 1999 through April 2002 and that listed the following four acts as bases for implied consent:

*5 "(1) Abandonment of the adoptee. Abandonment includes, but is not limited to, the failure of the father, with reasonable knowledge of the pregnancy, to offer financial and/or emotional support for a period of six months prior to the birth.

"(2) Leaving the adoptee without provision for his or her identification for a period of 30 days.

"(3) Knowingly leaving the adoptee with others without provision for support and without communication, or not otherwise maintaining a significant parental relationship with the adoptee for a period of six months.

"(4) Receiving notification of the pendency of the adoption proceedings under Section 26-10A-17 and failing to answer or otherwise respond to the petition within 30 days."

However, as the main opinion and Judge Thompson's dissenting opinion in *J.N.F. I* noted, the Legislature enacted Act No. 2002-417 in April 2002, while this case was pending, which added "[f]ailing to comply with Section 26-10C-1" as a fifth basis upon which a parent's implied consent to an adoption may be predicated. Section 26-10C-1, Ala.Code 1975, in turn, provides for registration of unmarried fathers of children with the Alabama Putative Father Registry as a prerequisite to claiming parental rights.

Moreover, Act No. 2002- 417 added a second subsection to § 26-10A-9 under which implied consent to an adoption "may not be withdrawn by any person."

It is undisputed that J.N.F. did not comply with § 26-10C-1. That section provides that a person filing a notice of intent to claim paternity of a child shall file a form with the State Department of Human Resources that includes various items of information, including the claimant's name, Social Security number, date of birth, and current address; similar information regarding the mother (if known); the claimant's income and financial information; the child's name and place of birth (if known); and the possible dates of sexual intercourse. Ala.Code 1975, § 26-10C-1(c). Since 1999, § 26-10C-1(i) has provided that any person claiming to be the biological father of a child who fails to file a proper notice of intent to claim paternity with the Registry within 30 days of the birth of any child out of wedlock "shall be deemed to have given an irrevocable implied consent in any adoption proceeding." The child in this case was born on June 10, 2001; however, J.N.F. did not file a notice of intent to claim paternity with the Putative Father Registry within the 30-day period specified in § 26-10C-1(i).[3]

Under Ala.Code 1975, § 26-10A-9(a)(5), § 26-10A-9(b), and § 26-10C-1(i), the effect of J.N.F.'s failure to file a notice of intent to claim paternity in compliance with Ala.Code 1975, § 26-10C-1, is clear: J.N.F. may properly be deemed to have given an *irrevocable* implied consent to the adoption of the child. The Legislature's intent, expressed in Section 3 of Act No. 2002- 417, that its amendments to § §

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[3] Although J.N.F. testified in the probate court that he had filed with the Putative Father Registry during the month of April after the child's birth, the record in the appeal from the juvenile court's judgment contains a document purporting to be a form mailed to the Registry on July 2, 2002.

26-10A-9 and 26-10C-1 be applied retroactively to January 1, 1997, indicates that the outcome reached by the probate court in this case is precisely that which the Legislature intended.

***6** [4] Interestingly, although the main opinion in *J.N.F. I* alluded to potential constitutional concerns regarding the retroactive application of Act No. 2002-417 in pending adoption litigation (while indicating that such concerns should be addressed by the probate court in the first instance), *see* 866 So.2d at 585, J.N.F. has not contended, at trial or on appeal, that the retroactive application of Act No. 2002-417 violates the United States or Alabama Constitutions in any manner. It is well settled that in the absence of a valid constitutional challenge, the judicial branch is bound to enforce the will of the Legislature. As the Supreme Court stated in *Beasley v. Bozeman,* 294 Ala. 288, 290, 315 So.2d 570, 571 (1975), "[t]he Legislature's power should not be interfered with unless it is exercised in a manner which plainly conflicts with some higher law."

In this case, the probate court's conclusion that J.N.F. impliedly consented to the adoption of the child is amply supported by the record and by the law of this state.[4] In addition, evidence presented at trial concerning the living arrangements of the maternal grandparents, J.N.F.'s checkered military career and labor history, and the mental and learning disorders from which J.N.F. apparently suffers supports the probate court's determination that permitting the maternal grandparents to adopt the child would serve the child's best interests. We thus conclude that the judgment of the probate court permitting the maternal grandparents to

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[4] We need not reach the maternal grandparents' alternative contention that J.N.F. "abandoned" the child by unilaterally enlisting in the armed services after the birth of the child.

adopt the child is due to be affirmed.

[5] Our conclusion regarding the appeal from the probate court's judgment allowing the adoption directly affects the viability of the mother's appeal from the juvenile court's judgment of paternity. As we stated in *Young's Realty, Inc. v. Brabham,* 896 So.2d 581, 583 (Ala.Civ.App.2004):

> " ' "The general rule is that an appeal is subject to dismissal if, pending the appeal, an event occurs which makes a determination of the appeal unnecessary." ' *Board of Adjustment of Montgomery v. Priester,* 347 So.2d 530, 531 (Ala.Civ.App.1977) (quoting *Moore v. Cooke,* 264 Ala. 97, 100, 84 So.2d 748, 749-50 (1956)). One such event is an elimination of a justiciable controversy between the parties pending appeal. *See Water Works & Sewer Bd. of Birmingham v. Petitioners Alliance,* 824 So.2d 705, 708 (Ala.2001) (dismissing appeal from action seeking declaratory relief on the basis that 'a present controversy between any of the parties' did not exist)."

During the pendency of the mother's appeal from the juvenile court's judgment declaring J.N.F.'s paternity, she gave unconditional consent to the adoption of the child by the maternal grandparents, and the probate court acted on that consent by entering a judgment permitting the child to be adopted by the maternal grandparents. Under Ala.Code 1975, § 26-10A-29(b), a portion of the AAC, after a final judgment of adoption has been entered, the natural parents of the adoptee are thereafter "relieved of all parental responsibility for the adoptee and will have *no parental rights* over the adoptee" (emphasis added). Because the probate court, after the juvenile court entered its paternity judgment in favor of J.N.F. as to the child, permitted the maternal grandparents to adopt the child, and because we have concluded that the probate court correctly entered that judgment, the mother's appeal from the juvenile court's

judgment of paternity is moot as a matter of law--even if this court were to reverse the juvenile court's judgment, the mother would in no event be legally entitled to any greater parental role in the life of the child. Because the appeal from the juvenile court's judgment is moot, we dismiss that appeal.

*7 2030567--APPEAL DISMISSED.

BRYAN, J., concurs.

THOMPSON, J., concurs in the result, without writing.

MURDOCK, J., concurs in the result, with writing, which CRAWLEY, P.J., joins.

2031028--AFFIRMED.

CRAWLEY, P.J., and MURDOCK and BRYAN, JJ., concur.

THOMPSON, J., concurs in the result, without writing.

MURDOCK, Judge, concurring in the result as to case number 2030567 and concurring as to case number 2031028.

I agree with the main opinion that our affirmance of the judgment of adoption of the probate court in case number 2031028 makes the separate appeal from the juvenile court's judgment of paternity moot. I disagree as to the reason this is so, however.

Insofar as the appeal of the paternity judgment is concerned, the relief requested would amount to an adjudication by this court that would deprive the father of any parental rights to the child. The appeal seeking that adjudication is moot, not because the party prosecuting that appeal has lost her own

parental rights,[5] but because such an adjudication has already been achieved in a separate proceeding; the father cannot be deprived by virtue of the appeal of the paternity judgment of any parental rights of which he has not already been deprived by virtue of our affirmance of the judgment in the adoption case.

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[5] I am concerned that the main opinion's focus upon the mother's loss of parental rights has the effect of a holding that a mother who has lost her parental rights has no standing to contest the father's parental status. The correctness of such a result might be argued (the ability of a party to contest a father's paternity action or to seek the termination of a parent's parental rights is not dependent on that party's status as a parent of the child), and the mootness of the appeal of the paternity judgment does not, in my opinion, turn on this issue.

APPENDIX C
STATUTORY PROVISIONS INVOLVED

§ 26-10A-9. Implied consent or relinquishment.

(a) A consent or relinquishment required by Section 26-10A-7 may be implied by any of the following acts of a parent:

(1) Abandonment of the adoptee. Abandonment includes, but is not limited to, the failure of the father, with reasonable knowledge of the pregnancy, to offer financial and/or emotional support for a period of six months prior to the birth.
(2) Leaving the adoptee without provision for his or her identification for a period of 30 days.
(3) Knowingly leaving the adoptee with others without provision for support and without communication, or not otherwise maintaining a significant parental relationship with the adoptee for a period of six months.
(4) Receiving notification of the pendency of the adoption proceedings under Section 26-10A-17 and failing to answer or otherwise respond to the petition within 30 days.
(5) Failing to comply with Section 26-10C-1.

(b) Implied consent under subsection (a) may not be withdrawn by any person

§ 26-10C-1. Registration of putative fathers; notice of intent to claim paternity; release of information.

(a) The Department of Human Resources shall establish a putative father registry which shall record the names, Social Security number, date of birth, and addresses of the following:

(1) Any person adjudicated by a court of this state to be the father of a child born out of wedlock.
(2) Any person who has filed with the registry before or after the birth of a child born out of wedlock, a notice of intent to claim paternity of the child, which includes the information required in subsection (c) below.
(3) Any person adjudicated by a court of another state or territory of the United States to be the father of a child born out of wedlock, where a certified copy of the court order has been filed with the registry by the person or any other person.
(4) Any person who has filed with the registry an instrument acknowledging paternity pursuant to Sections 26-11-1 to 26-11-3, inclusive.

(b) The clerk of the court which determines a man to be the father of a child born out of wedlock shall immediately notify the Department of Human Resources of the determination of paternity and include therein the information required under subsection (c) below.

(c) A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall include all of the following:

(1) The father's name, Social Security number, date of birth, and current address.
(2) The mother's name, including all other names known to the putative father that have been used by the mother, Social Security number, date of birth, and address, if known.
(3) The father's current income and financial information by attaching a child support obligation income statement/affidavit form to be prescribed by regulations of the department.
(4) The child's name and place of birth, if known.
(5) The possible date or dates of sexual intercourse.

The person filing shall notify the registry of any change of address pursuant to the procedures prescribed by regulation of the department. The registration must be on a form prescribed by the department and signed by the putative father and notarized.

The putative father may file his notice of intent to claim paternity prior to the birth of the child.

(d) A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed and, upon receipt of the notification by the registry, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

(e) An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party, other than the person who filed the notice, in any proceeding in which the fact may be relevant.

(f) The Department of Human Resources shall, upon request, provide the names and addresses of persons listed with the registry to any court. The information shall not be divulged to any other person except upon order of a court for good cause shown. The Department of Human Resources shall further after receiving notice pursuant to Section 26-10A-17 of the pendency of any adoption proceeding wherein the proposed adoptee is a child born within 300 days of the date or dates of sexual intercourse listed in the registry and to the same biological mother listed in the registry, immediately send a copy of the notice of intent to claim paternity to the court handling the adoption. When the court handling the adoption receives said notice of the intent to claim paternity, that court shall forthwith give notice of the pendency of the adoption proceeding to the putative father listed in such

notice of intent to claim paternity and at the address therein listed, and additionally notify the biological mother that the putative father has registered in conformity with the putative father registry.

(g) The Department of Human Resources shall create a form titled "Notice of Intent to Claim Paternity" to be used when a person files notice of intent to claim paternity, and which shall include the information required under subsection (c), the name of the mother who has given birth or may give birth to a child born out of wedlock, and the possible date or dates of sexual intercourse.

(h) The registry, except as provided by subsection (f), shall be kept confidential and not open for public inspection.

(i) Any person who claims to be the natural father of a child and fails to file his notice of intent to claim paternity pursuant to subsection (a) prior to or within 30 days of the birth of a child born out of wedlock, shall be deemed to have given an irrevocable implied consent in any adoption proceeding.

This subsection shall be the exclusive procedure available for any person who claims to be the natural father of a child born out of wedlock on or after January 1, 1997, to entitle that person to notice of and the opportunity to contest any adoption proceeding filed and pending on or after January 1, 1997.

(j)(1) A person who knowingly or intentionally registers false information under this section commits a Class A misdemeanor.
(2) A person who knowingly or intentionally releases confidential information in violation of this section commits a Class A misdemeanor. However, it is a defense under this

subsection if the Department of Human Resources releases confidential information while acting:

a. In good faith.

b. With reasonable diligence.